UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR FRONTIER BANK, Plaintiff, v. MICHAEL J. CLEMENTZ, RANDY E. DEKLYEN, LUCILLE M. DEYOUNG, JOHN J. DICKSON, ROBERT J. DICKSON, DAVID A. DORSEY, WILLIAM H. LUCAS, JAMES W. RIES, ROBERT W. ROBINSON, LYLE E. RYAN, DARRELL J. STORKSON, AND MARK O. ZENGER, Defendants.	Case No. **COMPLAINT AND** **JURY DEMAND**

Plaintiff, the Federal Deposit Insurance Corporation as Receiver for Frontier Bank of Everett, Washington ("FDIC-R"), for its Complaint, states as follows:

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I. INTRODUCTION

1. The Federal Deposit Insurance Corporation ("FDIC") brings this case in its capacity as Receiver for Frontier Bank ("Frontier" or "Bank") pursuant to authority granted by 12 U.S.C. § 1821.

2. The FDIC-R seeks to recover damages in excess of $46 million that former Frontier officers Randy E. DeKlyen ("DeKlyen"), John J. Dickson ("J. Dickson"), David A. Dorsey ("Dorsey"), James W. Ries ("Ries"), Robert W. Robinson ("Robinson"), and Lyle E. Ryan ("Ryan") (collectively, the "Officers"); and non-officer directors Michael J. Clementz ("Clementz"),[1] Lucille M. DeYoung ("DeYoung"), Robert J. Dickson ("R. Dickson"), William H. Lucas ("Lucas"), Darrell J. Storkson ("Storkson"), and Mark O. Zenger ("Zenger") (collectively, the "Non-Officer Directors") (collectively, the Officers and the Non-Officer Directors are referenced herein as "Defendants"), caused the Bank to incur. The FDIC-R reserves the right to amend this Complaint to describe additional damages.

3. The Officers breached their fiduciary duties to Frontier and were negligent and grossly negligent by, among other things, recommending, presenting for approval, and/or approving, in violation of the Frontier Bank Loan Policy ("Loan Policy") and prudent, safe, and sound lending practices, at least 11 loans between March 2007 and April 2008 ("Loans"). The Officers are liable for the damages that the Bank suffered as a result of their negligence, gross negligence, and breaches of fiduciary duties.

4. The Non-Officer Directors breached their fiduciary duties to Frontier and were grossly negligent by, among other things, approving the Loans in violation of the Loan Policy and prudent, safe, and sound lending practices. The Non-Officer Directors are liable for the damages that the Bank suffered as a result of their gross negligence and breaches of fiduciary duties.

[1] Although Clementz was an officer of Frontier from July 2000 to April 2003 and again from December 2008 to December 2009, he was not an officer at the time of the transactions at issue in this case.

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5. The FDIC-R seeks recovery of damages caused by the Officers' negligence, gross negligence, and breaches of fiduciary duties and the Non-Officer Directors' gross negligence and breaches of fiduciary duties in causing the Bank to violate its own policies and prudent, safe, and sound banking practices. In this lawsuit, the FDIC-R does not seek to collect upon outstanding loans, but rather seeks to collect damages flowing from the Defendants' negligence and/or gross negligence and breaches of fiduciary duties, which include, among other things, lost operating capital, lost profits, and lost investment opportunities.

II. PARTIES

6. Plaintiff is the FDIC in its capacity as Receiver of Frontier, pursuant to 12 U.S.C. § 1811, *et seq.* Prior to its failure, Frontier was insured by the FDIC. On April 30, 2010, the Bank was closed by the Washington Department of Financial Institutions, Division of Banks ("WDFI"), and the FDIC was appointed as Receiver. Under 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC-R has, among other powers, all rights, titles, powers, and privileges of Frontier, and of account holders, depositors, and stockholders with respect to Frontier and its assets.

7. Defendant Clementz is a former officer and director of the Bank. Clementz was an Executive Vice President ("EVP") of Frontier from July 2000 to April 2003, and a director from August 2000 to December 2009. Clementz was a member of the Bank's Directors' Loan Committee ("DLC") from April 2005 to December 2009. He succeeded J. Dickson as Chief Executive Officer ("CEO") of Frontier and was a member of the Executive Loan Committee ("ELC") from December 2008 to December 2009. Based on information and belief, Clementz currently resides in Indianola, Washington.

8. Defendant DeKlyen is a former officer of the Bank. DeKlyen was Frontier's EVP for Senior Branch Administration from 2007 to 2008 and a member of the ELC from April 2007 to April 2010. DeKlyen was EVP and Senior Credit Administrator from March 2009 until the Bank closed. Based on information and belief, DeKlyen currently resides in Bothell, Washington.

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9. Defendant DeYoung is a former director of the Bank. She was a director from April 1997 until the Bank closed and a member of the DLC from December 2004 to March 2010. Based on information and belief, DeYoung currently resides in Woodinville, Washington.

10. Defendant J. Dickson is a former officer and director of the Bank, and was CEO of the Bank when all of the Loans were approved. J. Dickson was Frontier's Senior Vice President ("SVP") and Cashier from 1993 to 1996, SVP of Financial Control from 1997 to 2003, CEO from May 2003 to December 2008, and President from December 2008 to March 2010. He also was a member of the ELC from April 2003 to March 2010 and a member of the DLC from April 2005 to March 2010. Based on information and belief, J. Dickson currently resides in Everett, Washington.

11. Defendant R. Dickson is a former officer and director of the Bank. He founded Frontier in 1978, was President and CEO of the Bank from 1978 to May 2003, and was a director and Chairman of the Board from 1978 to December 2008. R. Dickson also was a member of the DLC from December 2004 to December 2008, and was Chair of the DLC from 2006 to December 2008. Based on information and belief, R. Dickson currently resides in Everett, Washington.

12. Defendant Dorsey is a former officer of the Bank. Dorsey was Frontier's SVP and Manager from October 2001 to January 2009 and EVP of the Real Estate Division from February 2009 until the Bank closed. Dorsey also was a member of the ELC from April 2004 to April 2010. Based on information and belief, Dorsey currently resides in Everett, Washington.

13. Defendant Lucas is a former director of the Bank. Lucas was a director from 1978 to January 2009 and a member of the DLC from December 2004 to December 2008. Based on information and belief, Lucas currently resides in Everett, Washington.

14. Defendant Ries is a former officer of the Bank. Ries was a member of the ELC from April 2003 to August 2009 and President of the Real Estate Division from May 2003 until the Bank closed. Based on information and belief, Ries currently resides in Everett, Washington.

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15. Defendant Robinson is a former officer of the Bank. Robinson was Frontier's SVP for Credit Administration from August 2000 to May 2003 and Chief Credit Officer ("CCO") from May 2003 until the Bank closed. Robinson also was a member of the ELC from April 2003 to April 2010. Based on information and belief, Robinson currently resides in Bainbridge Island, Washington.

16. Defendant Ryan is a former officer of the Bank. Ryan was Frontier's EVP for Branch Administration from 2001 to 2002, President and Chief Operating Officer ("COO") from May 2003 to January 2007, President and Chief Banking Officer from January 2007 to December 2008, EVP for Senior Branch Administration from December 2008 to October 2009, and EVP for Private Client Services from October 2009 until the Bank closed. Ryan also was a member of the ELC from April 2003 to July 2009. Based on information and belief, Ryan currently resides in Everett, Washington.

17. Defendant Storkson is a former director of the Bank. Storkson was a director from April 1997 until the Bank closed, and was a member of the DLC from December 2004 to December 2009. Based on information and belief, Storkson currently resides in Mukilteo, Washington.

18. Defendant Zenger is a former director of the Bank. Zenger was a director from June 2005 until the Bank closed, and was a member of the DLC from June 2005 to March 2010. Based on information and belief, Zenger currently resides in Edmonds, Washington.

III. JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction for this action pursuant to 12 U.S.C. § 1811, *et seq.*, 12 U.S.C. § 1819(b)(1) and (2), and 28 U.S.C. §§ 1331 and 1345. The FDIC is a corporation organized and existing under the laws of the United States of America, and brings this action in its receivership capacity. Actions to which the FDIC is a party are deemed to arise under the laws of the United States. The FDIC, including in its capacity as Receiver, has the authority to sue and complain in any court of law. 12 U.S.C. § 1819.

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20. This Court has personal jurisdiction over the Defendants, who at all relevant times conducted business in the state of Washington.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because all or substantially all of the acts charged herein occurred in this District and the FDIC-R's claims arose in this District.

IV. FACTUAL BACKGROUND

22. Frontier was formed in 1978 and was headquartered in Everett, Washington. Beginning in 2003, Frontier instituted an aggressive growth strategy centered on increased commercial real estate ("CRE") lending with an emphasis on acquisition, development, and construction ("ADC") loans. From 2005 to 2007, Frontier's total real estate loans increased by more than 58% from $2.03 billion to $3.22 billion.

23. By 2009, Frontier had the highest concentration of ADC loans relative to total assets of any insured bank in the state of Washington. As of April 2010, the Bank was the largest commercial bank headquartered in western Washington, with approximately $3.6 billion in assets and approximately $3.1 billion in deposits. On April 30, 2010, the WDFI closed Frontier and the FDIC was appointed as Receiver.

24. Each of the Officers was negligent and grossly negligent and breached his fiduciary duties to Frontier by, among other things, recommending, presenting for approval, and/or approving certain Loans in violation of the Loan Policy and prudent, safe, and sound lending practices. Each of the Non-Officer Directors was grossly negligent and breached his or her fiduciary duties by, among other things, approving certain Loans in violation of the Loan Policy and prudent, safe, and sound lending practices. Defendants' acts and omissions caused Frontier to suffer damages in excess of $46 million.

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A. Defendants Knew that Frontier Was Concentrated in CRE and ADC Loans and Faced Risk of Losses in a Declining Real Estate Market

25. During the time period in which the Defendants approved the Loans, they knew or should have known that Frontier's lending was concentrated in CRE and ADC loans. Because of this concentration and Frontier's potential exposure to large losses on its portfolio of CRE and ADC loans from a decline in the real estate market, Defendants needed to exercise more care when recommending, presenting for approval, and/or approving CRE and ADC loans, including the Loans.

26. For example, during a February 2006 meeting of Frontier's Board of Directors, R. Dickson expressed concerns regarding the Bank's increasing level of real estate construction loans. Director J. Dickson acknowledged that Frontier's loan growth continued to exceed the increase in deposits, and suggested that the Board consider whether to "close down the loan growth spigot." Rather than curtail lending by closing that "spigot," the Board simply approved an increase in the Bank's loan loss reserve and the Defendants continued to approve CRE and ADC loans.

27. Over the weekend of September 15 and 16, 2006, Frontier conducted a Directors Planning Session, during which the directors identified one of Frontier's "strengths" as a "[s]trong real estate niche." That niche consisted of making CRE and ADC loans. The directors identified two of Frontier's "weaknesses" to be: "We are thin – limited resources and time" and "We're getting bigger." During the September 2006 Directors Planning Session, the directors also expressly recognized that one of the "threats" to the Bank was "[t]he housing market." The directors also recognized another threat, "Regulation – new heat on commercial real estate lending. We may have to change the way we do business."

28. Frontier's Officers also had actual and constructive notice of warnings in banking and financial publications about the impending decline of the real estate market. For example, from 2005 until the Bank failed, Frontier subscribed to a publication called "Real Estats," which provided Bank management, including certain Officers, with reports and "special letters" with county-by-

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county data on the Washington real estate market and predictions of the future performance of that market. In February 2006, the publisher of Real Estats personally made a presentation to Robinson, Ries, and other Frontier personnel, warning them that the real estate market was going to have a serious decline and discussing appropriate steps that should be taken to prepare for the impending market decline. In a March 1, 2006, "special letter" to the Bank, Real Estats cautioned that "the first 'domino' to fall in our markets will be raw land . . . . [L]enders need to underwrite and determine risk most carefully or they, too, will end up with dirt." Another "special letter" dated March 20, 2006 warned, "There is so much happening that will make housing falter tomorrow, that it is imperative you protect your business today."

29. Over the weekend of September 22 and 23, 2007, Frontier conducted another Directors Planning Session. During this session, Robinson and Ries presented a Real Estats overview of current real estate statistics, and the Bank's directors again highlighted as one of their "concerns" the fact that Frontier was "[h]ighly concentrated in real estate."

30. The publisher of Real Estats also sent Bank management, including Robinson and Ries, periodic e-mails warning about the anticipated decline of the housing market, including the housing market in Washington. Communications by certain of the Defendants relating to Real Estats, however, were often dismissive. For example, in October 2007, Ries, the President of Frontier's Real Estate Division, wrote to Real Estats, copying Robinson, Frontier CCO, stating, "[D]o you think that you could find any positive information out there to report, the doom and gloom is getting old[.]" Following this email, Robinson and Ries presented for approval and/or approved four of the ADC Loans discussed below.

31. The Defendants knew that the Bank was highly exposed in the area of CRE and ADC loans that would be negatively affected by a decline in the real estate market, and thus knew or should have known that they needed to exercise a heightened degree of care when approving such loans. Instead of exercising heightened care, however, the Defendants did just the opposite,

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repeatedly failing to follow their own policies. Moreover, the Defendants incentivized the Bank's loan officers to make risky loans by tying those officers' bonus compensation to loan originations. This was another reason why the Defendants should have been especially cautious in reviewing and approving loans.

B. Frontier's Loan Policy

32. Throughout the time period relevant to the FDIC-R's claims, the Loan Policy provided guidelines and standards for underwriting, reviewing, and approving various categories of loans. All of the Loans described in this Complaint were categorized under the Loan Policy as "Construction Loans," which included: (1) loans for residential and/or commercial real estate development; (2) loans for residential and/or commercial real estate acquisition; and (3) working capital loans for real estate acquisition and/or development.

33. Because of the risk associated with Construction Loans, Frontier's Loan Policy included very stringent requirements for this type of loan. There were three separate levels of underwriting and approval requirements. The first level applied to all loans that the Bank extended, regardless of type; the second level applied to all real estate loans; and the third level applied specifically to Construction Loans. Requirements at each level of underwriting and approval that are relevant to the FDIC-R's claims are discussed below.

Requirements Applicable to All Loans

34. The Loan Policy provided, among other things, the following primary areas of consideration for all loan applications:

a. borrower and/or guarantor creditworthiness;

b. the loan repayment ability of the borrower and/or guarantor, and primary and secondary repayment sources;

c. the purpose of the loan, including that the loan must be sound and not speculative;

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d. the nature and value of the collateral, properly margined;

e. economic conditions and trends in the area, industry, and firm; and

f. legal and regulatory requirements.

Requirements Applicable to All Real Estate Loans

35. The Loan Policy also established guidelines and standards for underwriting, reviewing, and approving all real estate loans. For every real estate loan application, the Loan Policy required a loan officer to evaluate the applicant's income relative to the applicant's financial obligations, verify sources of reported funds, evaluate the collateral, and analyze the loan terms. The loan officer would then present this information, along with additional details, in a loan memorandum ("Loan Memo") for the recommending and approving authorities to review. Among other things, the Loan Memo would state the purpose of the loan, the proposed pricing and term, the names of the borrower(s) and guarantor(s), a description of the collateral and its value, the total debt to the borrower(s), a summary of the balance sheets and gross incomes of the borrower(s) and guarantor(s), and other information as required by the Loan Policy. For any significant exceptions from the Bank's lending standards, policies, procedures, or controls in connection with a particular real estate loan, the DLC's minutes and/or the Loan Memo supporting the loan were required to note the following:

a. the reasons for the departure from the Bank's policy;

b. a detailed description of how such departure contrasted with the Bank's policy;

c. suggestions for corrective action for any noted deficiencies; and

d. additional information that would assist Frontier's directors and management to make an informed decision on the loan.

36. The Loan Policy also established guidelines for, among other things, minimum equity contributions and maximum loan-to-value ("LTV") ratios for real estate loans, including the following types of Construction Loans: raw land loans, land acquisition and development loans, and

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other general Construction Loans. The guidelines for raw land acquisition loans included: minimum hard equity[2] of 10% (35% if owned less than 12 months); minimum appraised equity[3] of 35%; maximum LTV ratio of 65%; and maximum supervisory LTV ratio[4] of 65%. The guidelines for land acquisition and development loans were: minimum hard equity of 10%; minimum appraised equity of 30%; maximum LTV ratio of 70%; and maximum supervisory LTV ratio of 75%. For other types of Construction Loans, the guidelines were: minimum hard equity of 10%; minimum appraised equity of 30%; maximum LTV ratio of 70%; maximum LTV ratio of 90% based on cost if the LTV ratio based on appraised value was greater than 70%; and maximum supervisory LTV ratio of 80%. Loans in excess of their maximum supervisory LTV ratios required special tracking by the Board of Directors and were subject to a strict aggregate limit. The aggregate amount of all such loans was not to exceed 100% of total capital, and, within this amount, the total amount of loans for commercial, agricultural, multi-family, and other non-1-4 family residential properties was not to exceed 30% of total capital.

37. As a precondition to granting any real estate loan, the Loan Policy also required at least one written appraisal of any property pledged as collateral that, among others:

a. was prepared by a qualified appraiser approved by the Bank;

b. was prepared for a federally insured financial institution;

c. was prepared in accordance with the Bank's Real Estate Appraisal and Evaluation Policies and Procedures ("Appraisal Policy"); and

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[2] The Loan Policy did not define the term "hard equity." An example of "hard equity" in FDIC regulations is "cash or unencumbered investment in the underlying property." Interagency Guidelines for Real Estate Lending Policies, 12 C.F.R. pt. 365, subpt. A, app A.

[3] The Loan Policy did not define the term "appraised equity." In the context of construction lending, the term "appraised equity" typically means the appraised value of the real property less the aggregate amount of debt that is secured by the real property.

[4] The Loan Policy provided supervisory LTV ratio limits as an additional underwriting safeguard. If an application for a loan indicated that the LTV would exceed the supervisory LTV limit, the loan officer was required to document the reasons for the requested exception to the Loan Policy and offer a recommendation.

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d. disclosed the market value of the security offered by the borrower along with sufficient information to substantiate the market value of the security.

38. Under Frontier's Appraisal Policy, an updated appraisal could be required if an internal evaluation indicated a deterioration in the value of the collateral.

39. In addition to evaluating the transaction-specific characteristics of loans, the Loan Policy also required the Bank's ELC and DLC to consider real estate market data gathered by the Bank's directors and officers when deciding whether to approve real estate loans. For example, the Loan Policy required the Bank's officers and directors to monitor and evaluate the real estate market conditions in the Bank's lending area including, but not limited to:

a. demographic indicators, including population and employment trends;

b. current and projected vacancy, construction, and absorption rates;

c. current and projected lease terms, rental rates, and sales prices;

d. current and projected operating expenses for different types of projects; and

e. economic indicators, including trends and diversification of the lending area;

40. The Loan Policy also required officers and directors to monitor and evaluate local, regional, and national real estate market conditions by reviewing available sources including, but not limited to:

a. newspapers and industry newsletters;

b. reports and press releases issued by universities and research organizations; and

c. economic indicators, such as unemployment statistics, housing starts, building permits issued, vacancies, etc.

Requirements Applicable to All Construction Loans

41. The Loan Policy required all Construction Loans to be secured by a first position mortgage or deed of trust.

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42. For Construction Loans dependent upon third-party financing, the Loan Policy required a take-out commitment issued by the lender providing the third-party financing.

43. The Loan Policy required the following documentation, among others, for Construction Loans:

a. cost estimates, including land and construction costs, off-site expenses, legal and insurance expenses, and loan interest;

b. an appraisal report with a feasibility and marketability evaluation;

c. a copy of the officially approved plans and specifications;

d. an estimate of income and expenses for rental property; and

e. a construction loan agreement.

44. The Loan Policy also required consideration of, among others, the risks that:

a. the borrower was unable to complete construction or development on time and/or within projected cost;

b. the appraisal did not accurately reflect the true value of the appraised asset;

c. rents, vacancies, or operating expenses could exceed projected amounts;

d. the collateral was insufficient; and

e. the borrower was unable to service the debt.

45. Before an approval decision could be made, the Loan Policy required an appraisal with special emphasis on feasibility, marketability, construction costs, and adequacy of the plans and specifications.

Loan Approval Structure and Limits

46. At all relevant times, Frontier had a tiered loan approval process. Primary lending authority was vested in the DLC, which could approve loans up to the Bank's legal lending limit. The DLC was comprised of the CEO and six other Bank directors. Four members of the DLC constituted a quorum for the committee's business. A majority vote of the present members was

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required for approval. In addition, the CEO's vote was necessary to approve any loan presented to the DLC.

47. The DLC delegated its lending authority, up to specified limits, to the ELC, CEO, President, and CCO. The lending authority of the ELC was $10 million. The ELC was comprised of the CEO, President, CCO, President of the Real Estate Division, and Senior Branch Administrator. A majority vote of these members was required for loan approval. In addition, any loan submitted to the ELC for approval required the CEO's vote of approval in order to be funded. Loans in excess of the ELC's lending authority were only considered by the DLC if the ELC first considered the loan and decided to present it to the DLC for approval.

48. The DLC and ELC generally received the following materials for purposes of evaluating whether to approve a loan: (a) the Loan Memo, as described in paragraph 35 above; and (b) standardized personal and business financial statements for the borrowers and guarantors. The DLC and ELC also had access to loan files, which contained the collateral appraisal, an appraisal review, borrower and/or guarantor tax returns, and other information.

C. The Defendants' Negligent and/or Grossly Negligent Acts and Breaches of Fiduciary Duties

49. As officers and/or directors of Frontier, the Defendants had duties to follow Frontier's Loan Policy and to exercise due care in recommending, presenting for approval, and/or approving the Loans.

50. Between March 2007 and April 2008, the Defendants left open the "loan growth spigot" and breached their duties by causing the Bank to approve loans that would not have been made had the Defendants complied with Frontier's Loan Policy, followed prudent, safe, and sound lending practices, and conducted and/or required the necessary due diligence, including basic loan review procedures.

51. The Defendants' repeated violations of Frontier's Loan Policy and prudent, safe, and sound lending practices occurred throughout the lending process. The Officers who recommended,

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presented for approval, and/or approved the Loans were negligent and grossly negligent and breached their fiduciary duties. The Non-Officer Directors who approved the Loans were grossly negligent and breached their fiduciary duties.

52. But for the Defendants' wrongful conduct, Frontier would not have made the Loans on the terms presented, as alleged below.

Borrowers A-C[5]

53. On or about October 22, 2007, on the recommendation of Dorsey, the ELC, including J. Dickson, Ries, Robinson, and Ryan, approved a $5.5 million Construction Loan to three individual borrowers, Borrower A, Borrower B, and Borrower C, (the "Borrowers A-C loan").

54. On or about October 29, 2007, the Bank disbursed approximately $5.0 million of the Borrowers A-C loan.

55. The Loan Memo for the Borrowers A-C loan stated that the purpose of the loan was to support the secured real estate lending activities of LLC A, which was a closely held entity that specialized in making bridge loans to large developers and which was partially owned by Borrowers A, B, and C. In particular, this $5.5 million loan was to be used to provide a carry on other loans made by LLC A related to the development of the Streamline Tower in Las Vegas, Nevada. On the face of the Loan Memo, the purpose of the loan was speculative and unsound.

56. The Loan Memo provided that the primary and secondary repayment sources were to be, in order, investment income and sale of real estate investments.

57. The Loan Memo also provided that the Borrowers A-C loan would be secured by a first lien on one of the borrowers' single family residence in Kirkland, Washington and by 39 shares

[5] Borrowers A, B, C, and D referenced herein represent individual borrowers whose names have been withheld to protect their privacy. LLCs A, B, C, D, and E referenced herein were named after individual members of the LLCs or their memberships were transparent. The names of these LLCs have been withheld to protect the privacy of their individual members. The names of these LLCs and borrowers will be provided once an appropriate protective order is in place.

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of O.D. Fisher Investment Company ("O.D. Fisher") restricted stock that the Loan Memo stated would *not* be sold to repay the loan.

58. In recommending or approving the Borrowers A-C loan, Defendants J. Dickson, Dorsey, Ries, Robinson, and Ryan, among other things:

a. Failed to consider the inadequacy of the repayment sources. The Loan Memo described the only repayment sources as "Investment income and sale of RE investments," stating "Monthly interest will be paid from investment income" and the "source of repayment for the remaining principal balance will come from the sale of the [Streamline Tower in Las Vegas, Nevada] where the funds are invested." The Loan Memo provided that LLC A was to increase its ownership in the project in order to receive a draw of 30% of net profits that was supposedly to be paid out at an unspecified date during the fourth quarter of 2008, which LLC A would use to "repay the remaining loan balance at that time." However, the term of the Borrowers A-C loan was only one year, ending on October 5, 2008, making it far from certain that LLC A would be able to repay the loan on schedule from the anticipated payment of profits relating to the Streamline Tower project. In addition, the Loan Memo failed to analyze the status of the Las Vegas condominium project and the Las Vegas real estate market, both of which were critically important to LLC A's ability to receive profits that could be used to pay off the balance of the loan. To make matters worse, even though LLC A was the identified beneficiary of the loan and should have been a formal borrower or guarantor of the loan, the loan documents did not bind LLC A in any way as a borrower or guarantor. As a result, the Bank was left with no legal recourse against LLC A, whose

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investment income and sale of real estate assets was to serve as the primary repayment source for the loan.

b. Failed to monitor, evaluate, and consider market conditions. Although the repayment sources for the loan were investment income and LLC A's sale of real estate investments, the Loan Memo presented only limited information on market conditions that was focused on the sale of the residence that was pledged as collateral rather than on the repayment sources, including the Streamline Tower project and the Las Vegas real estate market.

c. Failed to consider the inadequacy of the collateral. The Loan Memo described the collateral as the former personal residence of one of the borrowers and $4,602,000 in restricted shares in O.D. Fisher, a private investment company. The Loan Memo contained red flags showing that the proposed collateral was insufficient to secure the loan. For example, although the Loan Memo stated that the borrower had listed the house for sale for $2,100,000, it showed that $900,000 of the loan proceeds were to be used to pay off a mortgage held by Key Bank. The sale of the house, therefore, would only "net $1,200,000." The Loan Memo also noted that the purchase price of the property in 2000 was only $814,950 and the 2008 tax assessed value of the property was only $1,112,000. In addition, the Loan Memo requested that an appraisal of the residence be waived, even though the residence was "in the process of being appraised." These statements in the Loan Memo were red flags that should have prompted further due diligence by the Defendants on this loan regarding the residence pledged as collateral. Had the Defendants on this loan performed or required even a minimal amount of due diligence into the residence, they would discovered that the borrower had not yet "listed the house with Windermere for

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$2,100,000" and that the "listed" price was, in fact, merely an anticipated asking price. As to the O.D. Fisher shares, the Loan Memo valued them at $4,602,000, even though the shares were "restricted and w[ould] not be sold to repay the loan," and thus were of no real value to the Bank. The Loan Memo acknowledged that a loan "[w]eakness" was "[c]losely held stock not liquid," meaning that the shares, while having impressive value on paper, provided no real security for the loan. Other than acknowledging that the pledged shares would not be sold to repay the loan, the Loan Memo contained no analysis of the risks relating to that collateral or how those shares would contribute to adequately securing the loan. Notwithstanding these glaring red flags, the Loan Memo calculated the LTV ratio for the loan based on the *full* $2,100,000 anticipated asking price of the residence and the *full* $4,602,000 purported value of the restricted stock, and the Defendants on this loan approved the loan without requiring additional collateral or analysis.

d. Failed to evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan, and recommended or approved the loan notwithstanding the inadequate collateral. The Loan Memo stated that the LTV ratio for this loan was 82%, which exceeded the 70% LTV ratio limit, but it failed to explain why an exception to the Loan Policy was warranted. As to the residence, the Loan Memo presented the anticipated asking price of $2.1 million and requested to waive an appraisal. An appraisal completed on October 26, 2007, four days after the ELC approved the Borrowers A-C loan but before it was disbursed, valued the residence at only $1.55 million, which was $550,000 less than the value presented in the Loan Memo. The LTV ratio for the loan was 82% based on the higher valuation of the residence presented

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in the Loan Memo plus the O.D. Fisher stock, and 89.4% based on the lower appraised value of the residence plus the value of the O.D. Fisher stock. Both LTV ratios exceeded the Bank's LTV limit.

59. The deficient underwriting and credit analysis was apparent from the Loan Memo and supporting materials provided to the ELC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, the borrowers' creditworthiness did not support the loan amount, the collateral was illiquid and overvalued in the Loan Memo, the LTV ratio exceeded the Loan Policy limit, and the Borrowers A-C loan should not have been approved.

60. In or about February 2009, Borrowers A, B, and C defaulted on the loan. The supposed investment income and the sale of the real estate holdings were insufficient to repay the loan.

61. As a result of the actions and inactions of Defendants J. Dickson, Dorsey, Ries, Robinson, and Ryan with respect to the Borrowers A-C loan, Frontier incurred damages in an amount to be proved at trial.

LLC A (I)

62. On or about April 9, 2008, on the recommendation of Dorsey, DLC members DeYoung and Zenger purported to approve a $5.5 million Construction Loan for LLC A and Borrower C (the "LLC A (I) loan"). The LLC A (I) loan was not considered at a regularly-constituted DLC meeting or approved by a quorum of the DLC, as the Loan Policy required for all loans that required DLC approval. In addition, the LLC A (I) loan was closed and partially funded on or about March 31, 2008, which was nine days before DeYoung and Zenger purportedly approved the LLC A (I) loan.

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63. From about April 9, 2008 through March 2009, the Bank disbursed approximately $3,252,979 of the LLC A (I) loan.

64. The Loan Memo for the LLC A (I) loan stated that the purpose of the loan was to provide contingency funds to LLC A for four development projects on which Frontier had first liens.

65. The Loan Memo provided that the primary and secondary repayment sources were to be, in order, the sale of real estate assets from all projects and Borrower C's personal investment income.

66. The Loan Memo also provided that the LLC A (I) loan would be unsecured.

67. In recommending or approving the LLC A (I) loan, Defendants DeYoung, Dorsey, and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. For example, although the Loan Memo identified "Sale of real estate assets from all projects" (*i.e.*, real estate investment returns) as the primary source of repayment for the loan, the Loan Memo contained only cursory information regarding real estate market conditions and no real analysis. Indeed, the Loan Memo acknowledged that "the current flat market for sale of lots, which is the primary source of repayment from 3 of the related plats, *may delay repayment*. It is likely on completion of the Fenner plat[,] house construction may commence. House sales are moderately improving." (Emphasis added.) Beyond this acknowledgement that real estate investment returns were a risky source of repayment, the Loan Memo included no meaningful analysis of the "flat market," any basis for the lukewarm assertion that sales were "moderately improving," or any other analysis regarding market conditions, which directly

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affected the borrowers' ability to repay the loan. This lack of meaningful analysis in the Loan Memo was a red flag to DeYoung and Zenger.

68. The deficient underwriting and credit analysis was apparent from the Loan Memo and the lack of any collateral to secure this $5.5 million Construction Loan. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, there was no collateral securing the loan, and the LLC A (I) loan should not have been approved.

69. In or about March 2009, LLC A and Borrower C defaulted on the LLC A (I) loan. The sale of real estate was insufficient to repay the loan.

70. As a result of the actions and inactions of Defendants DeYoung, Dorsey, and Zenger with respect to the LLC A (I) loan, Frontier incurred damages in an amount to be proved at trial.

LLC A (II)

71. On or about April 9, 2008, DeYoung and Zenger also purported to approve an additional $2.0 million Construction Loan for LLC A (the "LLC A (II) loan"). The LLC A (II) loan was not considered at a regularly-constituted DLC meeting or approved by a quorum of the DLC, as the Loan Policy required for all loans that required DLC approval. In addition, the LLC A (II) loan was closed on or about March 31, 2008 and partially funded on or about April 1, 2008, which was eight days before DeYoung and Zenger purportedly approved the LLC A (II) loan.

72. On or about April 11, 2008, the Bank disbursed approximately $500,000 of the LLC A (II) loan.

73. The Loan Memo for the LLC A (II) loan stated that the purpose of the LLC A (II) loan was to provide working capital for LLC A's real estate investment portfolio.

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74. The Loan Memo provided that the primary and secondary repayment sources for the LLC A (II) loan were to be, in order, the refinance and sale of assets in LLC A's real estate portfolio and the guarantors' stock portfolios and incomes.

75. The Loan Memo also provided that the LLC A (II) loan would be unsecured.

76. In approving the loan, Defendants DeYoung and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. Although the Loan Memo identified refinance and sale of real estate assets as the primary source of repayment for the loan, the Loan Memo only listed assets that were for sale without providing any analysis regarding local real estate market conditions, such as information or analysis regarding vacancy rates, permitting trends, valuation trends, or other economic indicators that were essential to evaluating whether the refinance and sale of real estate assets were viable repayment sources for the loan. This lack of meaningful analysis in the Loan Memo was a red flag to DeYoung and Zenger.

77. The deficient underwriting and credit analysis was apparent from the Loan Memo and the lack of any collateral to secure this $2.0 million Construction Loan. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, there was no collateral securing the loan, and the LLC A (II) loan should not have been approved.

78. In or about April 2009, LLC A defaulted on the LLC A (II) loan. The loan was not refinanced by a third party, and the assets in LLC A's real estate portfolio and the guarantors' stock portfolios and incomes were insufficient to repay the loan.

79. As a result of the actions and inactions of Defendants DeYoung and Zenger with respect to the LLC A (II) loan, Frontier incurred damages in an amount to be proved at trial.

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Borrower D (I)

80. On or about November 5, 2007, Dorsey recommended and the ELC, including DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented to the DLC for approval a $3.8 million Construction Loan for LLC B, which was owned by Borrower D (the "Borrower D (I) loan"). On or about November 7, 2007, the DLC, including DeYoung, J. Dickson, Lucas, and Zenger, approved the Borrower D (I) loan. The DLC approved the loan to Borrower D, but the loan ultimately was made to LLC B with Borrower D as the guarantor. This loan was approved even though Borrower D already had total liabilities to Frontier in excess of $28.4 million. Both the Loan Memo and the DLC minutes stated that Borrower D's total liabilities to Frontier, including the Borrower D (I) loan, exceeded $32.2 million.

81. On or about December 5, 2007, the Bank disbursed approximately $3,776,000 of the Borrower D (I) loan.

82. The Loan Memo for the Borrower D (I) loan stated that the purpose of the loan was to pay off an existing loan with Frontier, replenish Borrower D's cash flow, and provide Borrower D with working capital for various ongoing real estate projects. On the face of the Loan Memo, the purpose of this loan was speculative and unsound.

83. The Loan Memo provided that the primary, secondary, and tertiary repayment sources were to be, in order, "Payment from contract receivable," income or sale of other assets, and conversion of the collateral.

84. The Loan Memo also provided that the Borrower D (I) loan would be secured by two assigned notes and second deeds of trust on two commercial buildings known as the Willows in Kirkland, Washington. The first deeds of trust secured a $10.7 million loan from G.E. Capital.

85. In recommending, presenting for approval, and/or approving the Borrower D (I) loan, Defendants DeKlyen, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger, among other things:

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a. Failed to require more than a vague and cursory analysis of the primary source of repayment – the "Payment from contract receivable." The Loan Memo failed to even identify the specific contract upon which the receivables were due. If the "contract receivable" was the amount owed on the two notes for the two Willows commercial buildings that served as collateral for the loan, the Loan Memo provided only a minimal amount of information and analysis regarding those notes. The aggregate monthly payments receivable under the two notes was only $131,000, and the notes did not mature until August and September 2015, respectively. The term of the Borrower D (I) loan, which was made in November 2007, was only 24 months. Even if every contract receivable was received on time, the primary source of repayment still would have been insufficient to repay the loan.

b. Failed to consider the guarantor's, *i.e.*, Borrower D's, lack of sufficient creditworthiness and his inability to support the loan, including, but not limited to, his limited liquidity and income and his high leverage. The Loan Memo stated that, although Borrower D had a self-reported net worth of $306 million and liquid assets of $33 million, he also had over $100 million of liabilities described as "friends and family investments." Even minimal diligence or requests for supporting information would have shown that these liabilities were notes that were payable on demand, meaning that the redemption of even one third of the outstanding value of these notes would have instantly rendered Borrower D insolvent. His illiquid assets, which consisted of notes receivables, "contracts owned," real estate, and land held for development, would not really have been available to support the loan if LLC B defaulted. In addition, the Loan Memo stated that Borrower D had AGIs of *negative*

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$42,226,500 in 2006, *negative* $72,565,100 in 2005, and *negative* $81,995,500 in 2004. The Loan Memo described Borrower D's negative AGIs as resulting from business losses and/or loss carryovers.

c. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan. Although the Loan Memo stated that the LTV ratio was 70% based on the "net margined equity" of $3.776 million, this loan was approved in the amount of exactly $3.776 million, the precise amount of the "[t]otal margined collateral value" that was calculated and shown in the Loan Memo. Therefore, the real LTV ratio was 100%, which violated the applicable LTV limit.

86. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, the contract receivables were insufficient to repay the loan, the guarantor could not support the loan, the LTV ratio exceeded the Loan Policy limit, and the Borrower D (I) loan should not have been approved.

87. In or about February 2009, LLC B defaulted on the Borrower D (I) loan. The contract receivables, Borrower D's income and other assets, and the collateral were insufficient to repay the loan.

88. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (I) loan, Frontier incurred damages in an amount to be proved at trial.

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Borrower D (II)

89. On or about February 4, 2008, Dorsey recommended and the ELC, including DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented a $3.0 million Construction Loan for Borrower D (the "Borrower D (II) loan") to the DLC for approval. On or about February 13, 2008, the DLC, including Clementz, J. Dickson, R. Dickson, Lucas, and Zenger, approved the Borrower D (II) loan. This loan was approved even though the Loan Memo and the DLC minutes stated that Borrower D's total liabilities to Frontier, including the Borrower D (II) loan, exceeded $32.1 million.

90. On or about March 3, 2008, the Bank disbursed essentially the entire Borrower D (II) loan.

91. The Loan Memo for the Borrower D (II) loan stated that the purpose of the loan was to fund improvements on recently acquired commercial real estate.

92. The Loan Memo provided that the primary, secondary, and tertiary repayment sources were to be, in order, rental income, other income or assets of the borrower, and conversion of the collateral.

93. The Loan Memo also provided that the Borrower D (II) loan would be secured by a second deed of trust on four office buildings in Bellevue, Washington.

94. In recommending, presenting for approval, and/or approving the Borrower D (II) loan, Defendants Clementz, DeKlyen, J. Dickson, R. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. Although the primary repayment source for the loan was to be rental income from the property, the Loan Memo was devoid of, and the Defendants on this loan failed to request, any analysis of market conditions, leasing trends in the area, or other issues that could affect the project or the likelihood that the Bank would

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be repaid for the loan through rental income. According to the Loan Memo, the debt coverage ratio ("DCR") was 1.0, which means that the property was generating barely enough income to pay its debt obligations, and was bordering on a negative cash flow. The Loan Memo requested approval of an exception to the Loan Policy for this low DCR. The Loan Memo identified Borrower D's income as a justification for this exception, even though Borrower D had reported negative AGIs for the previous *three years*, as discussed in subparagraph 85(b) above.

b. Failed to consider the borrower's lack of sufficient creditworthiness as described in subparagraph 85(b) above.

c. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan, and recommended or approved the loan notwithstanding the inadequate collateral. Under the Loan Policy, the LTV limit for this type of Construction Loan was 70%, but the Loan Memo disclosed that the LTV ratio for this loan based on the purchase price of the property was 91.9% and the LTV ratio based on the "as-is" value of the property was 80%. The LTV ratio based on an appraised value after improvements was 70.5%. Although the Loan Memo requested exceptions from the Loan Policy with respect to the LTV limit violations, there was no basis for granting these exceptions given the severe deficiencies in the borrower's financial condition and the size of his total liabilities to Frontier, as discussed above.

95. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that

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there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating real estate market, the borrower could not support the loan, an exception was not warranted for the LTV and debt coverage ratios, and the Borrower D (II) loan should not have been approved.

96. In or about February 2009, Borrower D defaulted on the Borrower D (II) loan. The rental income, Borrower D's other income and assets, and the collateral were insufficient to repay the loan.

97. As a result of the actions and inactions of Defendants Clementz, DeKlyen, J. Dickson, R. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (II) loan, Frontier incurred damages in an amount to be proved at trial.

Borrower D (III)

98. On or about March 24, 2008, Dorsey recommended and the ELC, including J. Dickson, Dorsey, Ries, Robinson, and Ryan, presented a $22.0 million Construction Loan for Borrower D (the "Borrower D (III) loan") to the DLC for approval. On or about March 26, 2008, the DLC, including Clementz, DeYoung, J. Dickson, Lucas, and Zenger, approved the Borrower D (III) loan. This loan was approved even though the Loan Memo and the DLC minutes stated that Borrower D's total liabilities to Frontier, including the Borrower D (III) loan, exceeded $53.8 million.

99. Between March 2008 and March 2009, the Bank disbursed approximately $19,655,984 of the Borrower D (III) loan.

100. The Loan Memo for the Borrower D (III) loan stated that the purpose of the loan was to finance the purchase of 13.53 acres and the construction costs of two two-story commercial buildings.

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101. The Loan Memo provided that the primary, secondary, and tertiary repayment sources were to be, in order, the proceeds from permanent financing, income or sale of the borrower's assets, and conversion of the collateral.

102. The Loan Memo also provided that the Borrower D (III) loan would be secured by a first deed of trust on the Sammamish Ridge Tech Center in Redmond, Washington.

103. In recommending, presenting for approval, and/or approving the Borrower D (III) loan, Defendants Clementz, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger, among other things:

a. Failed to consider the prospects for third-party financing. The Loan Memo described proceeds from permanent financing as the primary repayment source, however, it was devoid of any evaluation of refinancing prospects, challenges, or other relevant information. The Defendants on this loan, therefore, had no information upon which to judge the availability of third-party financing. The request in the Loan Memo also failed to include a take-out commitment from a third-party lender, as required by the Loan Policy.

b. Failed to consider the borrower's lack of sufficient creditworthiness as described in subparagraph 85(b) above.

c. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan, and recommended or approved the loan notwithstanding the inadequate collateral. For this type of Construction Loan, the Loan Policy established a 70% LTV ratio limit. Based on the appraised at-completion value of the collateral, the Loan Memo stated that the LTV ratio was 75%, which exceeded the Loan Policy LTV limit. Based on the other significant deficiencies in this loan identified above and the absence of

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any valid compensating factors, there was no basis warranting an exception to the Loan Policy for this LTV ratio violation.

104. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and the DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, there was no take-out commitment from a third-party lender, the borrower could not support the loan, the LTV ratio exceeded the Loan Policy limit, and the Borrower D (III) loan should not have been approved.

105. In or about March 2009, Borrower D defaulted on the Borrower D (III) loan. The loan was not financed by a third party, and Borrower D's income and other assets and the collateral were insufficient to repay the loan.

106. As a result of the actions and inactions of Defendants Clementz, DeYoung, J. Dickson, Dorsey, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the Borrower D (III) loan, Frontier incurred damages in an amount to be proved at trial.

GMP

107. On or about May 30, 2007, the ELC, including DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented a $17.0 million Construction Loan for GMP Homes Zocalo, LLC (the "GMP loan") to the DLC for approval. On or about June 6, 2007, the DLC, including Clementz, J. Dickson, R. Dickson, Lucas, Storkson, and Zenger, approved the GMP loan.

108. Between June 2007 and May 2008, the Bank disbursed approximately $15,438,778 of the GMP loan.

109. The Loan Memo for the GMP loan stated that the purpose of the loan was to enable GMP Homes Zocalo, LLC to complete the development of the Altura Townhomes project in Bothell, Washington, which was designed to be a 93-unit development to be built in three phases.

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The loan was to fund the development of phases 2 and 3 of the project and to pay down a loan for phase 1 of the project, which encompassed 33 townhouse units.

110. The Loan Memo provided that the sole repayment source was to be the sale of the completed condominiums.

111. The Loan Memo also provided that the GMP loan would be secured by a first deed of trust on the Altura Townhomes property.

112. In approving and/or presenting for approval the GMP loan, Defendants Clementz, DeKlyen, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. Although the Loan Memo described the sole repayment source as the "sale of completed condo units," it included only cursory references to market conditions that were relevant to the sale of those units, such as stating that "[t]his project is in a good location – and is in a marketable price range." The Loan Memo was devoid of any meaningful analysis as to local market conditions, inventory, or other trends that would affect the sale of condominium units and the repayment of the loan.

b. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio. The LTV ratio for the loan exceeded the limit established by Frontier's Loan Policy for this type of loan. The Loan Memo described the LTV ratio as 74.3% based on retail value and 83.6% based on discounted value at completion, both of which exceeded the applicable LTV limit of 70%. Although the Loan Memo identified the violation of the LTV limit as a requested exception to the Bank's Loan Policy, the Loan Memo was devoid of any analysis of or support for that exception. Furthermore, the

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discussions of this loan reflected in the minutes of the ELC and the DLC failed to identify any justification for this exception.

c. Failed to consider the guarantors' lack of sufficient creditworthiness and inability to support the loan, including, but not limited to, their limited liquidity and income and their high leverage. One guarantor was a principal of the borrower and the other was the principal's spouse. Minutes from the ELC and DLC meetings at which the GMP loan was approved stated that, including the $17 million GMP loan, the total related liability in amounts owed to Frontier was more than $57 million. The Loan Memo acknowledged the guarantors' high debt, stating: "We realize this is a high amount of debt for [one of the guarantors] . . . . We would like to accommodate [that guarantor] to continue on to the final two phases of this project." The minutes from the ELC and DLC meetings at which this loan was reviewed and approved also described "High debt level[s]" and "High debt concerns[,]" respectively. This debt dwarfed the amount of the guarantors' assets that would be available to support those loans. In fact, the guarantors' financial statements confirmed that they had very limited liquidity, with only $79,500 in cash. The guarantors' remaining assets were in real estate and other illiquid assets. The guarantors' financial statement also evidenced a history of limited, and even negative, income. The financial statement showed that the guarantors' adjusted gross income ("AGI") was *negative* $155,800 in 2005, $282,800 in 2004, and $123,000 in 2003. Even the guarantors' highest AGI in this period – $282,800 in 2004 – was only 1.66% of the $17 million GMP loan and 0.496% of the guarantors' total $57 million in total related liabilities to Frontier.

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113. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment source identified was speculative and vulnerable to a deteriorating housing market, the guarantors could not support the loan, and the GMP loan should not have been approved.

114. In or about May 2008, GMP Homes Zocalo, LLC defaulted on the GMP loan. The sale of the condominium units did not cover the loan.

115. As a result of the actions and inactions of Defendants Clementz, DeKlyen, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger with respect to the GMP loan, Frontier incurred damages in an amount to be proved at trial.

IH High Street

116. On or about May 8, 2007, the ELC, including DeKlyen, J. Dickson, Ries, and Robinson, presented a $6.2 million Construction Loan for High Street 10 & 11, LLC (renamed IH High Street, LLC) (the "IH High Street loan") to the DLC for approval. On or about May 9, 2007, the DLC, including DeYoung, R. Dickson, Lucas, Storkson, and Zenger, approved the IH High Street loan. On or about August 18, 2008, the ELC, including DeKlyen, J. Dickson, Ries, and Robinson approved a $442,115 increase to the IH High Street loan.

117. By January 2, 2009, the Bank had disbursed approximately $6,510,720 of the IH High Street loan.

118. The original Loan Memo for the IH High Street loan (the "May 2007 Loan Memo") stated that the purpose of the loan was to enable IH High Street, LLC to acquire property and fund the development of 12 condominiums in Issaquah Highlands, Washington. The Loan Memo for the August 2008 modification of the IH High Street loan (the "July 2008 Loan Memo") was prepared in

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July 2008 and stated that the purpose of the modification was to enable IH High Street, LLC to complete construction on the IH High Street project.

119. The May 2007 Loan Memo provided that the sole repayment source was to be the sale of the completed condominium units. The July 2008 Loan Memo provided that the repayment sources were to be, in order, the net sales from the completed condominium units and the liquidation of the assets of the guarantors, which were the principal of the borrower and the principal's wholly owned limited liability company, LLC C, which was the developer of the property.

120. Both Loan Memos provided that the IH High Street loan would be secured by a first deed of trust on the IH High Street property.

121. In approving and/or presenting for approval the IH High Street loan, Defendants DeKlyen, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Storkson, and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. The sale of the completed condominium units was the primary repayment source for the loan. Even though only 2 of the 12 units in the IH High Street project were under contract for sale, the May 2007 Loan Memo stated, without explanation or analysis, that it was "anticipated that within the next 120 days virtually all of Frontier Bank's current loans [to the borrower] will be paid off." The May 2007 Loan Memo also projected a seven-month construction period with sales completed within five months after construction, which, on its face, was unrealistic in light of the known softening of the local real estate market and violated the Loan Policy's requirement to consider the risk of completion date overruns. The May 2007 Loan Memo's cursory analysis of market conditions focused on LLC C's experience and success as a developer, but lacked any

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meaningful analysis of market conditions related to the IH High Street project, such as sales trends, inventory, and other issues. Moreover, the May 2007 Loan Memo's optimistic sales projections came three months after Robinson had received a report from Real Estats that, among other things, quoted a statement by *The Wall Street Journal* that "[v]acant U.S. homes for sale have climbed to their highest level in four decades, sparking fresh concerns about the housing market." Even though the project relied on real estate market stability, and despite indications of a downturn in the real estate market, the May 2007 Loan Memo failed to evaluate any risks associated with real estate market fluctuations, and the Defendants on this loan did not request or obtain revisions to the Loan Memo analyzing these issues. The dangers of these market risks were apparent by the time of the August 2008 loan modification, as reflected in the July 2008 Loan Memo, which revised the number of units under contract for sale from two to zero.

b. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan. The May 2007 Loan Memo stated that the LTV ratio was 74.7% based on an $8,268,000 valuation of the collateral at completion by an appraiser who was not on the Bank's approved list. The May 2007 Loan Memo also calculated an LTV ratio of 84.1% based on the $7,346,000 discounted value of the collateral at completion, and an LTV ratio of 90.0% based on the $6,871,221 "cost value" of the collateral. All three of these LTV ratios exceeded the applicable LTV limit of 70%. The minutes from the ELC and DLC meetings at which this loan was reviewed and approved also stated, "LTV discussed." The May 2007 Loan Memo, however, was devoid of any assessment of real estate market conditions that would have

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justified such an exception. The July 2008 Loan Memo listed the discounted value as $6,100,000 and provided an LTV ratio of 109%.

c. Failed to consider the borrower's and guarantors' lack of sufficient equity in the project. The May 2007 Loan Memo stated that $687,122 in borrower or guarantor equity was required for the loan, but also noted that the borrower and guarantors had in fact invested only $284,067 in the IH High Street project, which was only 4% of the amount of the loan, well below the Loan Policy's requirement that the borrower or guarantor possess 10% equity in the project.

d. Failed to consider the borrower's and guarantors' lack of sufficient creditworthiness and inability to support the loan, including, but not limited to, their high leverage and concentration of assets in real estate. The minutes of the meeting at which the ELC approved the IH High Street loan for presentation to the DLC stated: "Borrower is leveraged. Financials discussed." The minutes showed "Total Related Liability (If Approved)" of $18,128,598 for the borrower and the two guarantors of the IH High Street loan, which were the principal of the borrower and LLC C. LLC C was identified as holding only approximately $1 million in cash (about 16% of the loan amount) and was highly concentrated in real estate, making LLC C an unreliable guarantor in the event of a softening housing market. Excluding the principal's interest in LLC C, the principal's financial statement reflected a net worth of only $289,750, which constituted only 1.6% of the $18,128,598 in total related liabilities, including the IH High Street loan. Moreover, the principal's cash holdings were only $10,100, which equaled only 0.056% of the $18,128,598 total related liabilities. The combined cash holdings of LLC C and its principal were $1,015,780, which equaled only 5.6% of the $18,128,598 total related

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> liabilities, including the IH High Street loan. Due to their lack of liquidity, the guarantors could not sufficiently support the loan. By July 2008, the borrower's creditworthiness had deteriorated to the point that the July 2008 Loan Memo recommended downgrading the IH High Street loan to a 6 "as the borrower[']s ability to continue making interest payments [wa]s in doubt." Under the Loan Policy, a grade of 6 meant the "possibility of loss [wa]s extremely high." The Loan Policy further described a grade-6 loan as a loan with "no liquidity, highly leveraged, lack of adequate guarantor support, questionable collateral coverage with liquidation likely."

122. The deficient underwriting and credit analysis was apparent from the Loan Memos and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, the guarantors could not support the loan, and the IH High Street loan should not have been approved.

123. In or about February 2009, IH High Street, LLC defaulted on the IH High Street loan. The sale of the condominium units and the assets of the guarantors were insufficient to repay the loan.

124. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Storkson, and Zenger with respect to the IH High Street loan, Frontier incurred damages in an amount to be proved at trial.

LLC D (I)

125. On or about May 21, 2007, the ELC, including DeKlyen, J. Dickson, Ries, Robinson, and Ryan, presented a $4.5 million raw land acquisition loan for LLC D (the "LLC D (I) loan") to

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the DLC for approval. On or about May 23, 2007, the DLC, including DeYoung, J. Dickson, R. Dickson, Lucas, Storkson, and Zenger, approved the LLC D (I) loan.

126. Between June 2007 and August 2008, the Bank disbursed almost all of the LLC D (I) loan.

127. The Loan Memo for the LLC D (I) loan stated that the purpose of the loan was to enable LLC D to acquire a 15-acre site in Bothell, Washington and to cover a portion of expenses already incurred for the development of that property.

128. The Loan Memo provided that the primary and secondary repayment sources were to be, in order, a separate acquisition and development loan from another lender and the sale of lots.

129. The Loan Memo also provided that the LLC D (I) loan would be secured by a first deed of trust on the LLC D (I) property.

130. In approving and/or presenting for approval the LLC D (I) loan, Defendants DeKlyen, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger, among other things:

a. Failed to consider the prospects for third-party financing. The Loan Memo identified project refinancing (an "A & D loan") from a third-party as the primary repayment source, but no such refinancing had yet been secured and the Loan Memo was devoid of any evaluation of refinancing prospects, challenges, or other relevant information regarding whether refinancing was in fact available. The Defendants on this loan, therefore, had no information upon which to judge the availability of third-party financing. Analysis of refinancing prospects would have shown that, given the other deficiencies in the loan and the softening housing market, the borrower was unlikely to secure refinancing.

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b. Failed to monitor, evaluate, and consider market conditions. The ostensible secondary repayment source for the loan was "sale of lots to third party purchaser," but the Loan Memo failed to identify any such purchaser and presented almost no information or analysis regarding the real estate market conditions in the lending area indicating that such sales were likely or at what prices. The Loan Memo stated only that it was "more than likely the site will be sold to a large builder who would do the actual installation of the infrastructure," but was devoid of any analysis supporting that assertion. Furthermore, the lack of analysis of market conditions was particularly egregious because the Loan Memo failed to include an LTV ratio based on a completed appraisal.

c. Failed to consider and evaluate the inadequacy of the collateral for the loan, including the high LTV ratio for the loan. The Loan Memo acknowledged that no appraisal had been completed, but then estimated a 57% LTV ratio based only on an "anticipated value" of the collateral. The minutes from the ELC and DLC meetings at which this loan was reviewed and approved also stated, "Good LTV." In reality, the LTV ratio based on the budgeted acquisition cost for this raw land loan exceeded 100%, in violation of the Loan Policy's 65% LTV limit for raw land acquisition loans.

131. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, the project was unlikely to be refinanced, the local real

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estate market was deteriorating, the collateral was insufficient to secure the loan, and the LLC D (I) loan should not have been approved.

132. In or about November 2008, LLC D defaulted on the LLC D (I) loan. The loan was not refinanced by a third party, and the sale of the lots was insufficient to repay the loan.

133. As a result of the actions and inactions of Defendants DeKlyen, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, Storkson, and Zenger with respect to the LLC D (I) loan, Frontier incurred damages in an amount to be proved at trial.

LLC D (II)

134. On or about November 15, 2007, the ELC, including J. Dickson, Ries, and Robinson, approved and presented to the DLC a $3,107,500 Construction Loan for LLC D (the "LLC D (II) loan"). On or about November 28, 2007, the DLC, including Clementz, DeYoung, R. Dickson, Lucas, and Zenger, approved the LLC D (II) loan.

135. Between November 2007 and August 2008, the Bank disbursed the entire $3,107,500 of the LLC D (II) loan.

136. The Loan Memo for the LLC D (II) loan stated that the purpose of the loan was to provide an interest reserve for other Frontier-financed real estate loans to LLC D. On the face of the Loan Memo, the purpose of this loan was speculative and unsound.

137. The Loan Memo provided that the primary and secondary repayment sources were to be, in order, development and/or construction loans from third parties and the sale of properties securing a second deed of trust.

138. The Loan Memo also provided that the LLC D (II) loan would be secured by a second deed of trust on three properties on which Frontier already had first deeds of trust.

139. In approving and/or presenting for approval the LLC D (II) loan, Defendants Clementz, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, and Zenger, among other things:

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a. Failed to consider the prospects for third-party financing. The Loan Memo identified development and/or construction loans as the primary repayment source, but was devoid of any evaluation of refinancing prospects, challenges, or other relevant information regarding whether third-party loans were available. The Defendants on this loan, therefore, had no information upon which to judge the availability of third-party financing. Analysis of refinancing prospects would have shown that, given the other deficiencies in the loan and the softening housing market, the borrower was unlikely to secure loans from third parties.

b. Failed to monitor, evaluate, and consider market conditions. Despite the importance of lot sales as the secondary repayment source, the Loan Memo failed to offer any quantitative analysis of relevant market conditions, instead offering only anecdotal references to likely housing trends. Furthermore, the Loan Memo acknowledged that "qualified home buyers have been reluctant to buy at this time." The 75% LTV ratio on the LLC D (II) project exceeded the applicable 70% LTV limit. Moreover, the minutes of the meeting at which the DLC approved the LLC D (II) loan acknowledged that "[l]ot prices are coming down due to extremely slow sales. Builders are delaying new projects. . . . Need to watch all existing projects very closely." In addition, less than one month prior to approving the LLC D (II) loan, Ries wrote to the publisher of Real Estats, "do you think that you could find any positive information out there to report, the doom and gloom is getting old." The day before the DLC approved the LLC D (II) loan, an email from Real Estats to Ries included a comment that the areas in and around Seattle where LLC D was active "show[ed] continued deceleration in returns." Despite these warnings about

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the declining real estate market and the fact that lot sales were essential to the repayment of the loan, the DLC approved the LLC D (II) loan without conducting the required diligence regarding the impact of market conditions on the loan.

140. The deficient underwriting and credit analysis was apparent from the Loan Memo and other materials provided to the ELC and DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, the borrower was unlikely to obtain third-party financing, and the LLC D (II) loan should not have been approved.

141. In or about November 2008, LLC D defaulted on the LLC D (II) loan. The loan was not refinanced by a third party, and the collateral was insufficient to repay the loan.

142. As a result of the actions and inactions of Defendants Clementz, DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, and Zenger with respect to the LLC D (II) loan, Frontier incurred damages in an amount to be proved at trial.

LLC E

143. On or about March 12, 2007, the ELC, including J. Dickson, Ries, Robinson, and Ryan, presented a $10.3 million Construction Loan for LLC E (the "LLC E loan") to the DLC for approval. On or about March 14, 2007, the DLC, including DeYoung, J. Dickson, R. Dickson, Lucas, and Zenger, approved the LLC E loan.

144. Between June 2007 and November 2009, the Bank disbursed approximately $6,030,247 of the LLC E loan.

145. The Loan Memo for the LLC E loan stated that the purpose of the loan was to enable LLC E to purchase approximately 20.9 acres of land and develop 75 residential real estate lots as

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part of the Harvest Hills and Harvest Pond real estate projects in Marysville, Washington. Harvest Hills contained 71 lots, and Harvest Pond contained the remaining 4 lots.

146. The Loan Memo provided that the primary, secondary, and tertiary repayment sources were to be, in order, the proceeds from the sale of the lots in 2008, third-party refinancing for the project, and the liquid assets of the personal guarantors, who were principals of the borrower.

147. The Loan Memo provided that the LLC E loan would be secured by a first deed of trust on the LLC E property.

148. In approving and/or presenting for approval the LLC E loan, Defendants DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, and Zenger, among other things:

a. Failed to monitor, evaluate, and consider market conditions. While the Loan Memo stated that "[t]he appraisal was found to be acceptable to the bank," it omitted any evaluation of real estate market conditions in Marysville, even though the primary repayment source was to be the sale of the lots in 2008. Moreover, the Loan Memo described a 78% LTV ratio based on the appraised discounted value at completion of $13,165,000. The 78% LTV ratio exceeded the applicable LTV limit of 70%. Although the Loan Memo requested an exception from the Loan Policy for the high LTV ratio, the Loan Memo was devoid of any assessment of real estate market conditions that would have justified such an exception. The Loan Memo stated only that "[t]his authorization is requesting an advance exception of 78%, which is over the supervisory limit for the bank."

b. Failed to consider or analyze the prospects for third-party financing for the project even though "Refinance of Project" was the ostensible secondary repayment source. The Loan Memo was devoid of any evaluation of refinancing prospects, options, challenges, or other relevant information or

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analysis regarding whether refinancing was in fact available. The Defendants on this loan, therefore, had no information upon which to judge the availability of third-party financing.

c. Failed to consider the guarantors' lack of sufficient creditworthiness and inability to support the loan, including, but not limited to, their limited income and liquidity and their high leverage. The guarantors had adjusted gross incomes in 2005 of only $191,800 and $113,300, respectively, and combined cash assets of only $2,020,800. In addition, the guarantors had personal and business liabilities in excess of $3 million, which significantly exceeded their combined cash assets.

149. The deficient underwriting and credit analysis was apparent from the Loan Memo and supporting materials provided to the ELC and the DLC. Had the Defendants on this loan insisted on the required underwriting and credit analysis, it would have demonstrated, among other things, that there was no adequate source of repayment, the repayment sources identified were speculative and vulnerable to a deteriorating housing market, third-party financing was unlikely, the guarantors could not support the loan, and the LLC E loan should not have been approved.

150. In or about July 2009, LLC E defaulted on the LLC E loan. The project was not refinanced by a third party, and the proceeds from the sale of the lots and the assets of the personal guarantors were insufficient to repay the loan.

151. As a result of the actions and inactions of Defendants DeYoung, J. Dickson, R. Dickson, Lucas, Ries, Robinson, Ryan, and Zenger with respect to the LLC E loan, Frontier incurred damages in an amount to be proved at trial.

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V. CAUSES OF ACTION

COUNT I – BREACH OF FIDUCIARY DUTIES (All Defendants)

152. The FDIC-R re-alleges and incorporates by reference the allegations contained in paragraphs 1-151 above as if fully set out in this Count.

153. As officers and/or directors of the Bank, at all times, the Defendants owed to Frontier the fiduciary duties of care and loyalty, which required them to exercise their powers in good faith and in a manner reasonably believed to be in the best interests of the Bank.

154. Defendants' fiduciary duties included, among other things: conducting the business of Frontier in a manner consistent with safe and sound lending practices; using prudent procedures for recommending, presenting for approval, and/or approving loans; recommending, presenting for approval, and/or approving loans in accordance with Frontier's Loan Policy; acting with the requisite care in the discharge of their duties; and informing themselves, prior to making business decisions, of all the material information reasonably available to them.

155. For each loan, the material information reasonably available to the Defendants included, among other things, information regarding the reliability and adequacy of the repayment sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy and prudent, safe, and sound lending practices.

156. Frontier reasonably reposed trust and confidence in each of the Defendants and believed they would exercise the trust and confidence reposed in them with great care.

157. The Defendants each knew or should have known that the Bank was placing its trust and confidence in them, and the Bank did place its trust and confidence in each of them, as demonstrated by the fact that each of the Defendants was an officer and/or a director of the Bank and had the responsibility to recommend, present for approval, and/or approve loans. Trust and

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confidence was also placed in the Defendants either because they assisted in preparing, publicizing, and enforcing the terms of the Bank's Loan Policy, or because each of them read and agreed to follow the Bank's Loan Policy.

158. With respect to the Loans, each of the Defendants possessed significant access to relevant knowledge and facts due to each Defendant's special position of power at the Bank and the confidence each Defendant invited others to repose in him or her with respect to such Loans, based on the fact that each Defendant actively engaged in the recommendation, presentation for approval, and/or approval of the Loans.

159. As officers and/or directors of the Bank, and as individuals recommending, presenting for approval, and/or approving the Loans, each of the Defendants was in a special position of influence and power, and each of them exercised that influence and power in a manner that directly caused harm to the Bank.

160. The Defendants breached their fiduciary duties to the Bank by committing the acts and omissions alleged above.

161. As a direct and proximate result of the Defendants' breaches of their fiduciary duties, Plaintiff has suffered damages in excess of $46 million. Plaintiff reserves the right to amend this Complaint to describe additional damages.

COUNT II – GROSS NEGLIGENCE
(All Defendants)
(Pleaded in the Alternative to Count I)

162. The FDIC-R re-alleges and incorporates by reference the allegations contained in paragraphs 1-151 above as if fully set out in this Count.

163. Under Washington law and 12 U.S.C. § 1821(k), as officers and/or directors of the Bank, the Defendants can be held personally liable for damages to Frontier caused by their gross negligence.

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164. As officers and/or directors of the Bank, at all times, the Defendants owed to Frontier a duty to use care, skill, and diligence in the performance of their duties as officers and/or directors of Frontier.

165. The Defendants' duty of care to Frontier included, among other things: conducting the business of Frontier in a manner consistent with safe and sound lending practices; using prudent procedures for recommending, presenting for approval, and/or approving loans; recommending, presenting for approval, and/or approving loans in accordance with Frontier's Loan Policy; and informing themselves, prior to making business decisions, of all the material information reasonably available to them.

166. For each loan, the material information reasonably available to the Defendants included, among other things, information regarding the reliability and adequacy of the repayment sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy and prudent, safe, and sound lending practices.

167. The Defendants breached their duties and were grossly negligent by committing the acts and omissions alleged above.

168. As a direct and proximate result of the Defendants' gross negligence, Plaintiff has suffered damages in excess of $46 million. Plaintiff reserves the right to amend this Complaint to describe additional damages.

COUNT III – NEGLIGENCE
(Officers DeKlyen, J. Dickson, Dorsey, Ries, Robinson, and Ryan)

169. The FDIC-R re-alleges and incorporates by reference the allegations contained in paragraphs 1-151 above as if fully set out in this Count.

170. Under Washington law, as officers of the Bank, the Officers can be held personally liable for damages to Frontier caused by their negligence.

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171. As officers of the Bank, at all times, the Officers owed to Frontier a duty to use care, skill, and diligence in the performance of their duties as officers of Frontier.

172. The Officers' duty of care to Frontier included, among other things: conducting the business of Frontier in a manner consistent with safe and sound lending practices; using prudent procedures for recommending, presenting for approval, and/or approving loans; recommending, presenting for approval, and/or approving loans in accordance with Frontier's Loan Policy; and informing themselves, prior to making business decisions, of all the material information reasonably available to them.

173. For each loan, the material information reasonably available to the Defendants included, among other things, information regarding the reliability and adequacy of the repayment sources, the value and sufficiency of the collateral, the creditworthiness of the borrowers and guarantors, the LTV ratio, the risks associated with the downturn in the real estate market, and any other information necessary to ensure that the proposed loan complied with Frontier's Loan Policy and prudent, safe, and sound lending practices.

174. The Officers breached their duties and were negligent by committing the acts and omissions alleged above.

175. As a direct and proximate result of the Officers' negligence, Plaintiff has suffered damages in excess of $46 million. Plaintiff reserves the right to amend this Complaint to describe additional damages.

VI. **RELIEF REQUESTED**

WHEREFORE, the FDIC-R demands a trial by jury and judgment in its favor and against the Defendants as follows:

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A. Determining the amount of damages caused by the Defendants;

B. Determining the amount of accrued interest (including pre-judgment interest) on such damages;

C. Awarding the FDIC-R the full amount of damages and accrued interest;

D. Awarding the FDIC-R its costs and other expenses incurred by it in connection with this proceeding; and

E. Granting the FDIC-R such other and further relief as this Court may deem just and proper under the circumstances.

VII. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the FDIC-R demands a trial by jury.

Respectfully Submitted,

Dated: April 26, 2013. **ATER WYNNE LLP**

By: /s/ *Stephen J. Kennedy*

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